No. 73.

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JAMES H. McKENNEY

Brief of Hanson, Clarke & Peck for P. L. Solan

Filed Oct. 18, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

Term No. 73.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Plaintiff in Error,

vs.

PATRICK L. SOLAN,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF IOWA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

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STATEMENT.

This action was brought in the District Court of Sioux County, Iowa, by Patrick L. Solan, as plaintiff against the Chicago, Milwaukee and St. Paul Railway Company, as defendant, to recover $10,000 on account of personal injuries alleged to have been sustained by him while riding in a caboose attached to one of defendant company's stock trains while in transit from Rock Valley, Iowa, a station on defendant's line of railway, to the City of Chicago, in the State of Illinois.

It is alleged that the injuries complained of, occurred by reason of the negligence of said railway company in

running its freight train to which said caboose was attached, at a high rate of speed, and that by reason of the said railway company failing to keep its track in proper repair, said caboose was derailed and plaintiff injured.

The plaintiff was being carried with two cars of cattle which he was shipping under a contract between the owner of the cattle and the railway company, for their transportation from Rock Valley, Iowa, to the Union Stock Yards, Chicago Illinois; this contract is attached to an amendment to plaintiff's petition, and may be found on pages 6, 7 and 8 of the transcript of record herein.

It will be observed that this contract is what is termed a "Limited Liability Live-stock Contract," and was issued upon the condition that the liability of the railway company in the event of loss or damage should not exceed the sums therein mentioned, and the eighth clause of said contract is as follows:

"Eighth. That the company shall in no event be liable to the owner or person in charge of said stock for any injury to his person in an amount exceeding the sum of $500.00"

The defendant relied upon this clause, and specially pleaded the same as a defense to any recovery in excess of the sum of $500, and further alleged that in consideration thereof it entered into the contract for the transportation of said stock at reduced rates from Rock Valley, Iowa, to Chicago, Illinois; that said contract related exclusively to interstate transportation and constituted an interstate commerce transaction, and that the plaintiff and the owner of the stock having accepted the benefits of said contract are estopped from from questioning its validity or disavowing the same; that at common law said contract is valid and legal, and

that section 1308 of the code of Iowa is void and unconstitutional so far as said contract is concerned, as being an attempt to regulate and limit contracts relating to interstate commerce.

Section 1308 of the code of 1873, is as follows:

"No contract, receipt, rule, or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation, been made or entered into."

The court, on the trial, in its charge to the jury, in stating plaintiff's cause of action, left the jury at liberty to find a verdict for the full sum of $10,000, claimed by plaintiff in his petition.

The court in its charge to the jury said:

"There are other matters in the pleadings which are not for your decision and hence are not submitted to you."

The court thus eliminated from the case all rights which defendant railway company had under the eight clause of the contract above set forth, and denied to it the benefits thereof, holding that under section 1308 of the code of Iowa, above cited, the contract was invalid and therefore did not limit the liability of the railway company as a common carrier in the transportation of said live stock and that as to the plaintiff who was in charge thereof, the liability which would have existed if the contract had not been entered into, was not changed, limited or modified.

In other words, the court held by its charge that in a contract for the transportation of property from a point in the State of Iowa to a point in the State of Illinois, the Iowa statute would enter into and become a part of it, so as to render the limitation which the parties had themselves contracted for in reference to to such transportation nugatory and void.

The court further in its charge, in paragraph 4 thereof, instructed the jury that if they found the defendant was guilty of negligence as charged in plaintiff's petition, they would find for plaintiff, unless such recovery was defeated by plaintiff's contributory negligence, and did not limit the amount of plaintiff's recovery to the sum of $500, as limited by the eighth clause of the contract between the parties, and nowhere by its charge or in any other manner limited the amount of plaintiff's recovery to such sum.

A verdict for $1,000 having been returned by the jury, judgment was entered for that sum, and an appeal was taken to the Supreme Court of Iowa, and afterwards, on the 31st day of May, 1895, the appeal was determined by the Supreme Court of Iowa. The judgment of the District Court of Sioux County was affirmed on the grounds:

1. That the contract in question was void under the provisions of the statute above cited.

2. That this statute was not a regulation of interstate commerce as applied to a contract for the transportation of passengers. (Rec., 31.)

A final judgment was on said date entered in said cause in favor of the plaintiff and against the defendant.

And afterwards, on the 7th day of August, 1895, the defendant, as plaintiff in error herein, sued out its writ of error and removed said cause to this court, having at the time of suing out such writ of error, made and filed the following:

Assignment of Errors.

Comes now the Chicago, Milwaukee and St. Paul Railway Company, and assigns error upon the decision and final judgment rendered in this cause in the opinion and decision filed herein by the judges of the Supreme Court of Iowa, on the 31st day of May, A. D. 1895, as appears upon the face of the record in said decision and judgment in the following particulars, to wit:

1. It is provided section 8 of article 1 of the Constitution of the Unit States that Congress shall have power to regulate commerce among the several States, and in said decision the Supreme Court of Iowa held and decided that section 1308 of the Code of Iowa is a limitation upon the right of the defendant to limit by contract the liability which attaches to it as a common carrier of persons and property, in transporting the same from a point in the State of Iowa, to a point in the State of Illinois, and a limitation upon the right of the defendant to make the contract under which the plaintiff was being transported at the time he was injured, which contract was admitted in evidence on the trial of this cause, as appears by the record herein.

2. The court erred in holding and deciding that section 1308 of the Code of Iowa, as applied to the contract under which the plaintiff was being transported at the time he was injured, and which was admitted in evidence on the trial of said cause, was not a regulation of commerce between the States, and for that reason the contract was void under said section 1308 of the Code of Iowa.

3. The court erred in holding and deciding that the

plaintiff, Solan, was not barred by the contract under which he was being transported at the time he was injured, which contract appears in the record herein, from recovering from the defendant for the injuries which he received while being transported under said contract any sum greater than five hundred dollars, the amount specified in said contract.

4. The court erred in holding and deciding that the defendant could not exempt itself from liability to the plaintiff to the extent and in the manner provided for in the contract under which plaintiff was being transported at the time he was injured, which contract was received in evidence on the trial of this cause, and appears in the record herein.

5. The court erred in refusing to decide that said section 1308 of the Code of Iowa is unconstitutional and void, as regulating commerce among the states, when applied to the contract under which the plaintiff was being transported at the time of the injury, which contract was received in evidence on the trial of this cause and appears in the record herein.

6. The court erred in refusing to decide and hold that, notwithstanding section 1308 of the Code of Iowa, the defendant had the right to limit by contract its liability for damages on account of injuries which the plaintiff sustained while being transported under the contract in question, which contract was received in evidence on the trial of this cause and appears in the record herein.

7. The court erred in refusing to decide and hold, notwithstanding section 1308 of the Code of Iowa, that the defendant had the right to limit by contract its liabili-

ties for injuries to persons and property while transporting such persons and property from a point within the State of Iowa to a point within the State of Illinois. (Pr. Rec., 35, 36.)

More briefly stated, the assignment of errors covers the one proposition, that section 1308 of the Iowa code as construed by the Supreme Court of that state and applied to the contract in question, is a regulation of commerce between the states, and therefore unconstitutional and void; that said contract was valid and binding upon the parties, and that the amount of the recovery should have been limited to $500.

ARGUMENT.

I.

THE CONTRACT IN SUIT RELATES WHOLLY TO INTERSTATE COMMERCE, AND THE STATUTE OF IOWA, AS CONSTRUED BY THE SUPREME COURT OF THAT STATE, WAS AN INTERFERENCE WITH, AND A REGULATION OF, INTERSTATE COMMERCE.

The Constitution of the United States (Par. 3, of Sec. 8, of Art. I) provides that: "The Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes."

The uniform course of decision in construing this clause of the constitution has been that this power is exclusive; that is, that it can be exercised by Congress alone, and that any rules or regulations in relation to it made by

any other body, power or authority, are void, and the courts have uniformly held that transportation is a part of commerce and within the power conferred upon Congress.

One of the earlier and leading cases upon the subject is that of *Gibbon* v. *Ogden*, 9 Wheat., 1, where the State of New York had attempted to grant to Robert Fulton and Robert R. Livingston the exclusive right to navigate, by steam, all waters of the State of New York, and the grant was held invalid so far as it prohibited vessels licensed according to the laws of the United States from carrying on the coasting trade and navigating said waters by means of steam, for the reason that it was in conflict with this clause of the constitution.

In the case of the *State Freight Tax*, 15 Wall., 232, the State of Pennsylvania passed a law levying a tax upon freight transported from one state to another, and it was held to be a violation of this clause of the constitution.

Hall v. *DeCuir*, 95 U. S., 485, was the case of a steamboat navigating the Mississippi river, and the action was brought by a colored person, who was taken up as a passenger at New Orleans, in Louisiana, and put off the boat at Hermitage, in the same state, against the captain of the boat for wrongfully excluding her from the cabin in violation of the laws of Louisiana. The court held that the statute of Louisiana could not be enforced for the reason that the steamer was engaged in interstate commerce.

The case of *Lord* v. *Steamship Co.*, 102 U. S., 541, was a case where the steamship was engaged in transportation wholly within the State of California, but in such transportation it traversed the ocean between differ-

ent points in the state, and it was held that her business was wholly within the regulating power of congress.

The case of *Wabash, etc. Railway Co.* v. *Illinois*, 118 U. S., 557, was an action for violating the statute of Illinois in charging a higher rate to one person than another on a shipment from a point in Illinois to New York. The court held, that the Illinois statute could have no force or effect in the case, and that the shipment was governed wholly by the law of Congress, even as to that portion of the transportation which was in the State of Illinois.

In the case of the *Western Union Telegraph Company* v. *Pendleton*, 122 U. S., 347, where an attempt was made by the statute of Indiana to regulate the mode in which messages sent by telegraph companies doing business in said state shall be delivered in other states, the court held, that such statute was void as being an interference with the freedom of interstate commerce.

The same doctrine was held in the case of *Fargo* v. *Michigan*, 121 U. S., 230, and in *Steamship Company* v. *Pennsylvania*, 122 U. S., 326, where attempts were made to impose taxation in one of the states through which interstate commerce passed, and it was held that such attempts were in violation of the Constitution of the United States.

In *Covington, etc. Bridge Co.* v. *Commonwealth of Kentucky*, 154 U. S., 204 the court held, that the Kentucky law fixing rates of toll and fare over the bridge spanning the Ohio river at that point and connecting the States of Ohio and Kentucky was an attempted regulation of commerce which it was not within the power of the state to make.

And in *Bowman* v. *Chicago & North-Western Railroad Company*, 125 U. S., 465, the court held that the Iowa statute, forbidding any common carrier to bring within that state any intoxicating liquors from any other state or territory without first having the certificate therein required, was a regulation of interstate commerce, and was void, as repugnant to the Constitution of the United States.

These cases clearly establish the doctrine that whenever the transportation is interstate in its character, it is subject only to the regulation of Congress, and any attempt on the part of any state to regulate or interfere with interstate commerce, by statute or otherwise, is void.

II.

THE CONTRACT IN SUIT RELATES TO MATTERS OF INTERSTATE COMMERCE OVER WHICH CONGRESS HAS EXCLUSIVE CONTROL.

It will be observed that the contract in suit is in relation to the terms, conditions and rates of a shipment of stock from Rock Valley, Iowa, to Chicago, Illinois, so that said contract is in relation to the terms, conditions and rates of an interstate shipment, and the statute of Iowa, therefore, so far as the contract in suit is concerned, is a regulation of matters of interstate commerce over which Congress has exclusive control.

The power of Congress over commerce between the states, and the corresponding power of individual states over such commerce, have been the subject of frequent adjudication in this court, and it has been uniformly held that state legislation which seeks to regulate commerce

between states by fixing railroad fares and rates, or to impose restrictions or burdens upon interstate commerce, or to interfere with its freedom, does encroach upon the exclusive power of Congress.

The case at bar comes squarely within the doctrine laid down in the case of *Wabash, etc., Railway Company* v. *Illinois*, 118 U. S., 557. In this case the court say:

"We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a state which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the states, is a valid law."

"Let us see precisely what is the degree of interference with transportation of property or persons from one state to another which this statute proposes. A citizen of New York has goods which he desires to have transported by the railway companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier: 'I am free to make a fair and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that state, pursuing at the same time this continuous track, I am met by the law of Illinois which forbids me to make a free contract concerning this transportation within that state, and subjects me to certain rules by which I am to be governed as to the charges which the same railway company in Illinois may make, or has made, with reference to other persons and other places of delivery.' So that while that carrier might be willing to carry these goods from the City of New York to the City of Peoria, at the rate of 15 cents per 100 pounds, he is not permitted to do so because the Illinois railway company has already charged at the rate of 25 cents per 100 pounds for carriage to Gilman, in Illinois,

which is eighty-six miles shorter than the distance to Peoria."

"So, also, in the present case, the owner of corn, the principal product of the country, desiring to transport it from Peoria, in Illinois, to New York, finds a railroad company willing to do this at the rate of 15 cents per 100 pounds for a carload, but is compelled to pay at the rate of 25 cents per 100 pounds because the railroad company has received from a person residing at Gilman 25 cents per hundred pounds for the transportation of a carload of the same class of freight over the same line of road from Gilman to New York. This is the result of the statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the Supreme Court of that state. The effect of it is that whatever may be the rate of transportation per mile charged by the railroad company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and the unloading of the freight is the largest expense incurred by the railway company, the same rate per mile must be charged from Peoria to the City of New York."

"The obvious injustice of such a rule as this, which railroad companies are by heavy penalties compelled to conform to, in regard to commerce among the states, when applied to transportation which includes Illinois in in a long line of carriages through several states, shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of the United States, whose enlarged view of the interests of all the states, and of the railroads concerned, better fits it to establish just and equitable rules."

"Of the justice or propriety of the principle which lies at the foundation of the Illinois statute it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the state, it may be very just and equitable, and it certainly is the province of the state legislature to determine that question. But when it is attempted to apply the transportion through an entire series of states, a principle of this kind, and each one of the states shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the dele-

terious influence upon the freedom of commerce among the states and upon the transit of goods through those states cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demmonstrated it is, and as the Illinois court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the constitution.''

The doctrine laid down in the case just quoted from, is supported by a long line of decisions. The case of *Hall* v. *DeCuir*, 95 U. S., 485, the court, speaking in reference to the rights of the states in certain classes of interstate commerce to pass laws regulating them, say :

" The line which separates the powers of the state from this exclusive power of Congress, is not always distinctly marked ; and oftentimes it is not easy to determine on which side a particular case belongs. Judges not infrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitary rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without, or goes out from within. While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some

extent in the management of his business throughout his entire voyage. It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardships. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments."

In the case of *Welton* v. *Missouri*, 91. U. S., 275, it was said:

"It will not be denied that that portion of commerce with foreign countries and between the states which consists in the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the general government was to insure this uniformity against discriminating state legislation."

And in *Mobile County* v. *Kimball*, 102, U. S., 691, the same idea is very clearly stated in the following language:

"Commerce with foreign countries and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodity. For the regulation of commerce as thus defined there can only be one system of rules, applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate states is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over com-

merce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are nearly auxilliary to commerce."

In the case of *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S., 204, the court used this language:

"It needs no argument to show that the commerce with foreign nations as between the states which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation."

In the case of *Western Union Telegraph Company* v. *Pendleton*, 122 U. S., 347, which was a case where the statute of Indiana attempted to regulate the mode in which messages sent by telegraph companies doing business in the state shall be delivered in other states, the court in its decision holding that such regulation was an interference with the freedom of interstate commerce, this language is used:

"The Supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the states is affirmed, whenever that body chooses to exert its power; and it is also held that the states can impose no impediments to the freedom of that commerce. In conformity with these views the attempted regulation by Indiana of the mode in which messages sent by telegraphic companies doing business within her limits shall be delivered in other states cannot be upheld. It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose, as the imposition of a tax by the State of Texas upon every message transmitted by telegraph companies within her limits to other states was beyond her power."

In *Bowman* v. *Chicago & Northwestern Company*, 125 U. S., 465, this language was used:

"The rule has been asserted with great clearness that whenever the subjects over which a power to regulate

commerce is asserted or in their nature national, or admitting of one uniform system or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress."

Under these authorities which have just been cited, it must necessarily follow that the State of Iowa cannot by statute or otherwise, regulate, restrict or interfere with parties engaged in interstate commerce, and forbid them from contracting with reference to it, as they would have a legal right to do, if it were not for the state statute. It is clear that the subject-matter of the contract in suit relates wholly to matters of interstate commerce over which Congress has the exclusive control, and the statute of Iowa as applied to said contract by the Supreme Court of that state, is such a regulation, restriction and interference with interstate commerce as renders it invalid and inoperative as regards interstate transportation; so that the carrier and shipper would be left free under the general law governing interstate commerce to contract as to a limit of the amount to be recovered in case of loss.

Under this general law, it is for the shipper A to say how much of a risk he will take upon himself in consideration of a reduction in the charge of carriage; while, at the same time, it is for shipper B to say that he will take none of the risk, that he will pay the full charge, and hold the carrier to his full accountability at common law. Thus each party is left free to contract with the carrier as to his own freight, and to contract for a limited liability in case of loss in consideration of such a rate of charge of carriage as to him shall seem his property can or should bear. This freedom to contract in view of the character of property to be transported and in view of the rate of transportation to be fixed, is an important right,

and the denial of it must have an important bearing on the cost of carriage and the expense of carrying on interstate commerce. Necessarily, this must be so; for, if the carrier be compelled to take upon himself the risk of full liability on all shipments, and is forbidden to limit his liablility, there cannot be much doubt that, for the increased care and risk that would thus be put upon him he would be obliged, and it is but just that he should, to increase the amount of his charges, so as to compensate him for the increased liability he is thus obliged to assume. For illustration, suppose the case of a carrier, whose business prior to the time this statute was enacted, was carried on, one half on unlimited liability contract and the other half on contract which put full liability on the carrier. Now the statute is enacted and we will suppose it to be valid. What would follow? There would be an increase of expense to the carrier in providing for the greater degree of care required of him and an increase in rate to meet such expense, as to all shipments which were before embraced in the contracts for limited liability. If the statute expressly provided for such an increase of rate on such shipments, no one would doubt the invalidity of the statutes. What difference in the legal principle involved, between the one case and the other; whether the regulation is effective by the express language of the statute or by its operation when put in force? There would seem to be none; the statute of Iowa under discussion thus indirectly fixes or regulates what rates the carrier and shipper shall make, and limits and restricts the basis and conditions and terms upon which such rates shall be fixed, and limits and restricts the freedom of contract between the parties.

The reasoning of the court in the case of *Wabash, etc.*,

Railway Company v. *Illinois* (*supra*) is peculiarly applicable to the case at bar and it seems to us is decisive of the case. For instance, a citizen of Illinois has stock which he wishes to have transported from Chicago to some point within the state of Iowa; a continuous line of rail over which a car loaded with this stock can be carried and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of the route from whence the goods are to start, and he is told by the carrier, I am free to make a fair and reasonable contract for this carriage to the line of the state of Iowa, and I can undertake the transportation of this stock for a certain rate fixed upon the basis of the cost of transportation and a full liabilty for any loss that may occur; I would be glad to enter into a contract with you at greatly reduced rates, if I could limit my liability in case of loss; but, when the car carrying this stock crosses the line into the State of Iowa, I am met by a law of Iowa which forbids me to make a free contract concerning this transportation, and subjects me to certain rules and regulations in regard to the kind of contracts by which I am to be governed, and so I am obliged to make my charges so as to cover the increased liabilities imposed upon me by this statute. So that, while that carrier might be willing to carry this stock from the State of Illinois into the State of Iowa at a reduced rate, in consideration that the contract of shipment contained a provision that his liability as a common carrier should be limited to an amount therein agreed, and while the shipper might be willing and glad to enter into such a contract in consideration of the reduced rate, they are not permitted to do so, because there is a statute in Iowa declaring such a contract invalid.

So, in the case at bar, the owner of the stock finds a carrier willing to make the contract in suit for the shipment of stock from Rock Valley, Iowa, to Chicago, Illinois, at a reduced rate, in consideration that the liability of the carrier is limited, and the shipper and the carrier, with full knowledge of all the terms and provisions of the contract, freely enter into the same; and now, when a loss has occurred and suit is brought against the carrier under this contract, the court enforces the statute of Iowa in question and holds that the contract is void and that the carrier is under the same liability that it would have been had no such contract been made, and the full rate of charge been exacted.

The obvious effect of this statute of Iowa, as thus construed and applied, can be no other than the regulation of commerce between the states, for it affects the rates charged for interstate shipments and regulates and restricts and limits the freedom of contract between parties engaged in interstate commerce.

The Supreme Court of Iowa, in its opinion upholding the validity of the statute in question, say:

"The question involved is not different in principle from that decided by the Supreme Court of the United States in what are known as the Granger cases,"

and cite *Munn* v. *Illinois*, 94 U. S., 113, and others of the same class of cases. It will be observed that this court in *Wabash, etc., Railway Company* v. *Illinois* (*Supra*), say, in discussing the Munn case:

"The court treated the cases then before it as belonging to that class of regulations of commerce which, like pilotage, bridging navigable rivers, and many others that could be acted upon by the states in the absence of any legislation by Congress on the same subject."

It was further observed in that case that:

"The great question to be decided and which was decided, and which was argued in all those cases, was the right of the state in which the railroad company did business to regulate or limit the amount of any of these traffic charges. The importance of that question overshadowed all others; and the case of *Munn* v. *Illinois*, was selected by the court as the one most appropaiate in which to give its opinion on that subject because the case presented the question of a private citizen, or unincorporated partnership, engaged in the warehouse business in Chicago, * * * free from the question of continuous transportation through the several states, * * * and the question how far a charge made for continuous transportation through the several states, which included a state whose laws were in question, may be divided into separate charges for each state, in enforcing the power of the states to regulate the fares of its railroads, was evidently not fully considered."

And again the court say:

"We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a state which attempts to regulate the fares and charges by railroad companies within its limits for a transportation which constitutes a part of commerce among the states is a valid law."

In Covington & Cincinnati Bridge Company v. *Kentucky*, 154 U. S., 204, the court, referring to the opinion in the Wabash case, and in the Munn case, say:

"The substance of the opinion was that, if the prior cases were to be considered as laying down the principle that the state might regulate the charges for interstate traffic, they must be considered as overruled. In none of the subsequent cases has any disposition been shown to limit or qualify the doctrine laid down in the Wabash case, and to that doctrine we still adhere."

Thus it is clear that the question involved in the suit at bar was not decided in the Munn case, as the Supreme Court of Iowa assumed in its opinion, or if there was

ever any language in that case which could be construed as supporting the doctrine that a state could regulate interstate commerce, the same has now been overruled by this court.

III.

SECTION 1308 OF THE CODE OF IOWA CAN IN NO SENSE BE UPHELD AS AN EXERCISE OF THE POLICE POWER OF THE STATE.

Police power in its broadest acceptation means the general power of a government to preserve and promote the public welfare, even at the expense of private rights. (See Cooley's Const. Lim., 6th Edition, p. 704; also Tiedeman's Lim. of Police Power, Section 1.)

Probably the best definition is that given in the case of the *New Orleans Gaslight Company* v. *Hart*, 40 La. Ann., 474, where it is said: Police power is the right of the state functionaries to prescribe regulations for the good order, peace, protection, comfort and convenience of the community which do not encroach upon the like power vested in Congress by the Federal Constitution.

Blackstone defines public policy to be, "the due regulation of the domestic order of the kingdom, where by the individuals of the state, like members of a well governed family, are bound to conform in their general behavior to the rules of propriety, good neighborhood and good manners; and to be decent, industrious and inoffensive in their respective stations.

4 Blackstone, Com., 162.

It was said in *Stone* v. *Mississippi*, 101 U. S., 814, by WAITE, C. J.,: "Many attempts have been made in

this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate."

See, also,

Boston Beer Company v. *Mass.*, 97 U. S., 25, and

People v. *King*, 110 N. Y., 423.

It is not necessary to prolong this brief further upon this branch of the case. Tested by the cases above cited it is clear that the statute of Iowa, which directly limits the general power of citizens of one state to contract with citizens of another state with reference to transportation of property from one state into or through another, can in no sense be said to come within what is known as the police power of the state, it is not a regulation for the peace, happiness or safety of the citizens of the state in which they are located.

IV.

THE CONTRACT IN SUIT IS A VALID CONTRACT.

If the contract, then, was a contract with reference to interstate commerce, and if the statute of Iowa would not prevent the railway company from limiting, by contract, its liability for damages, we come then to the question as to whether, so far as interstate commerce is concerned, such a contract as was set up in this case is a valid contract.

The construction of a contract of this character was before this court in the case of *Hart* v. *Pennsylvania R. R.*

Co., 112 U. S., 343, and the validity of the same was sustained. This was a case brought by the plaintiff to recover damages from the defendant as a common carrier for the breach of a contract to transport from Jersey City to St. Louis, five horses and other property. The petition alleges that by the negligence of the defendant one of the horses was killed and the others injured and other property destroyed, and damages were claimed to the amount of $19,800. The property was transported under a bill of lading issued by defendant to the plaintiff, substantially similar to the one on which the defendant in this case relies, it being stipulated that the property was received by the defendant company for itself and on behalf of connecting carriers, for transportation, upon certain terms and conditions, which were admitted and accepted by the shipper as just and reasonable. On the trial the court held that the plaintiff was entitled to recover the sum of $1,200, that being the limit of recovery, fixed by the contract under which the horses were transported, and the error assigned was that the court erred in refusing to permit the plaintiff to show the actual damages which he had sustained, and in so charging the jury as to restrict their verdict to $1,200.

In discussing this case, the court say:

"It is further contended by the plaintiff, that defendant was forbidden by public policy, to fix a limit for its liability for a loss by negligence, at an amount less than the actual loss by such negligence. As a minor proposition, a distinction is sought to be drawn between the case where a shipper, on requirement, states the value of the property and the rate of freight is fixed accordingly, and the present case. It is said, that, while in the former case the shipper may be confined to the value he so fixed, in the event of a loss by negligence, the same rule does not apply to a case where the valuation inserted in the

contract is not a valuation previously named by the shipper. But we see no sound reason for this distinction. The valuation named was the 'agreed valuation,' the one which the minds of the parties met, however it came to be fixed, and the rate of freight was based on that valuation, and was fixed on condition that such was the valuation and that the liability should go to that extent and no further.

"We are, therefore, brought back to the main question. It is the law of this court, that a common carrier may, by special contract, limit his common law liability; but that he cannot stipulate from exemption from the consequenses of his own negligence or that of his servants. *Nav. Co.* v. *Merchants' Bk.*, 6 How., 344; *York Co.* v. *R. R. Co.*, 3 Wall., 107 (70 U. S.); *R. R. Co.* v. *Lockwood*, 17 Wall., 357; *Exp. Co.* v. *Caldwell*, 21 Wall., 264; *R. R. Co.* v. *Pratt*, 22 Wall., 123; *Bank* v. *Ex. Co.*, 93 U. S., 174; *R. Co.* v. *Stevens*, 95 U. S., 655. * * *

"The limitation as to value has no tendency to exempt from liability from negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value for the purposes of the contract of transportation between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and of the freedom of contracting, and thus in conflict with public policy if a shipper should be allowed the benefit of the contract if there is no loss and to repudiate it in case of loss."

* * * * *

"We have given consideration to the views taken in these later cases, but are unable to concur in their conclusions. Applying to the case in hand the proper test to be applied to every limitation of the common law lia-

bility of a carrier, its just and reasonable character, we have reached the result indicated. In Great Britain a statute directs this test to be applied by the court. The same rule is the proper one to be applied in this country in the absence of any statute."

The doctrine in this case and the cases cited therein clearly sustain the validity of the contract in suit.

The Supreme Court of Iowa in its opinion while it concedes that the doctrine in *Hart* v. *Penna. Co. supra*, may be sound doctrine as applied to contracts for the transportation of property, that it would not be a correct rule as applied to the transportation of passengers, and that a different rule as to the contract for carrying passengers would govern from that as to property.

We believe the authorities uniformly hold that there is no distinction between the right to limit the amount of damages as between property and persons. In *Hutchinson on Carriers*, section 583, the text laid down is as follows:

"The decision of the courts as to the right of the carrier of passengers to limit his liability for the neglect of that care, and circumspection which the law requires of him, have followed the same course as those upon the right of the carrier of goods to guard himself by contract with the bailor against the consequences of his negligence; and the same diversity as to the validity of such contracts and the extent to which they may provide against the carrier's liability, when they are allowed, is to be found. The courts before which this subject has come, both as to the carrier of passengers and as to the carrier of goods, do not seem to have been influenced in the conclusions to which they have come by the difference in the subjects of the contracts in the two cases. The same courts which deny the right of the common carrier of goods to provide by his contract against the consequences of his negligence, deny, also, the same right to the passenger carrier when the carriage of the dassenger himself

is the subject of contract, however explicit the contract may be, and even though the carriage may be gratuitous. And this may be stated to be the now decidedly prevailing doctrine in this country.'' As supporting this text is cited the following: *Cleveland R. R. Co.* v. *Curran*, 19 Ohio State, 1; *Penn. R. R. Co.* v. *Henderson*, 51 Penn. St., 315; *Jacobus* v. *R. R. Co.*, 20 Minn., 125; *Rose* v. *D. M. R. R. Co.*, 39 Iowa, 246; *Ohio etc. R. R.* v. *Selby*, 47 Ind., 471; *Mobile etc. R. R.* v. *Hopkins*, 41 Ala., 486; *Flinn* v. *R. R.*, 1 Hous., (Del.) 469.

Furthermore the statute in question itself applies in express terms to both merchandise and passengers.

It is respectfully submitted that the judgment and decision of the Supreme Court of Iowa are erroneous and should be reversed.

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ADDENDA.

The following statute of Iowa is referred to in the argument of this case:

SEC. 1308. No contract, receipt, rule, or regulation, shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made or entered into.